

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

STERIGENICS U.S., LLC,)	
)	
Plaintiff,)	Case No. 19-cv-01219
v.)	
)	Hon. Ruben Castillo
JOHN KIM, not individually, but solely in his capacity as Acting Director of the Illinois Environmental Protection Agency, and the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Defendants.)	
)	

**PLAINTIFF STERIGENICS U.S., LLC'S AMENDED MOTION FOR
PRELIMINARY INJUNCTION AGAINST ENFORCEMENT OF THE SEAL ORDER
DATED FEBRUARY 15, 2019**

Plaintiff Sterigenics U.S., LLC (“Sterigenics”), by and through its undersigned counsel, brings this amended motion pursuant to Fed. R. Civ. P. 65 seeking a preliminary injunction against enforcement of the Seal Order dated February 15, 2019. In support of this Motion, Sterigenics will file a forthcoming memorandum on or by March 5, 2019, pursuant to the Parties’ Joint Stipulation and [Proposed] Order for Entry of Agreed-Upon Schedule for Briefing and Discovery (Dkt. 35), which will cover the following:

1. Under the federal Clean Air Act Permit Program (“CAAPP”), Defendant Illinois Environmental Protection Agency (“IEPA”) issued Sterigenics Permit No. 95120085, which is still in effect today. The CAAPP permit authorizes Sterigenics to emit a specified quantity of ethylene oxide annually in the course of sterilization operations in its facility in Willowbrook, Illinois (the “Willowbrook facility”). Sterigenics has—up to and through February 15, 2019—complied with the emissions limits authorized in that permit.

2. Nonetheless, just after 5:00 pm on Friday, February 15, 2019, defendants John Kim and the IEPA issued a “Seal Order” with respect to “[a]ll storage containers of ethylene oxide” at the Willowbrook facility. Defendants purported to issue the Seal Order under 415 ILCS 5/34(b), which authorizes IEPA to issue a seal order if there is “imminent and substantial endangerment to the public health or welfare or the environment.”

3. Entry of a preliminary injunction is warranted where a plaintiff establishes “a reasonable likelihood of success on the merits, no adequate remedy at law, and irreparable harm absent the injunction.” *Planned Parenthood of Ind., Inc. v. Comm’r of Ind. State Dep’t Health*, 699 F.3d 962, 972 (7th Cir. 2012). As will be demonstrated in Plaintiff’s forthcoming memorandum, this standard is met here.

4. ***Sterigenics Has A Strong Likelihood of Success On The Merits.*** Sterigenics is entitled to immediate entry of a preliminary injunction barring enforcement of the Seal Order. Sterigenics’ Complaint alleges that the Seal Order violates both the Due Process Clause of the federal Constitution and Section 34 of the Illinois Environmental Protection Act. Sterigenics easily satisfies the requirement of demonstrating a “better than negligible chance of succeeding” on both its due process and its Section 34 claims. *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1014 (C.D. Ill. 2009).

5. First, Sterigenics is likely to succeed on its due process claim. The IEPA issued a Seal Order and shut down the Willowbrook facility without providing any pre-deprivation process whatsoever. This deprivation of Sterigenics’ property without a prior hearing—where Sterigenics complied with all applicable federal and state limits on its use of ethylene oxide—was a violation of Sterigenics’ rights under the Due Process Clause. Nor can the Seal Order be justified as an emergency measure, because the evidence makes clear that the storage containers

of ethylene oxide sealed by the Seal Order do not give rise to any immediate or substantial endangerment. Indeed, the United States Environmental Protection Agency has repeatedly stated that *there is no emergency*. The Seal Order is an improper attempt by the IEPA to circumvent Sterigenics' right to due process.

6. Second, post-deprivation process is inadequate to protect Sterigenics' constitutional rights. Failing to provide pre-deprivation due process is permissible only where there is a "necessity" for "prompt action." *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435 (1982)—but as the regulators have made clear, no such necessity exists here. Moreover, the post-deprivation process afforded to Sterigenics is insufficient to provide it a timely avenue to obtain effective relief from the unlawful Seal Order.

7. Third, Sterigenics is likely to succeed on its claim under 415 ILCS 5/34(d), because the Seal Order is facially deficient and factually unsupported. The Seal Order makes no attempt to show any sort of immediate and substantial endangerment caused by the ethylene oxide containers. To the contrary, overwhelming evidence attests to the abundant safety of these highly regulated containers. Additionally, the use of a Seal Order here against a facility for expressly authorized and concededly lawful activities is unprecedented, inappropriate, and unjust.

8. ***The Public Interest Favors a Preliminary Injunction.*** The Seal Order has immediately disrupted the supply of essential and irreplaceable medical devices, which by regulation can be sterilized only at the Willowbrook facility. Customers who rely on Sterigenics' services may not find adequate alternate sterilization services. The shut-down may soon force hospitals to triage procedures and to delay procedures determined to be non-critical.

Indeed, the situation and risks created by the Seal Order have already raised concerns at the

federal Food and Drug Administration (“FDA”). On February 27, 2018, the FDA issued a notice indicating that more than 100 manufacturers have already been impacted by the Willowbrook shut down. The FDA also is already monitoring for, and evaluating options to protect against, product shortages.

9. ***Sterigenics Will Suffer Irreparable Harm Absent Injunctive Relief.*** Sterigenics’ well-deserved reputation as a reliable, safe, and innovative company, along with its customer relationships, will be irreparably damaged by even a brief shutdown. Further, the Seal Order will throw the livelihoods of 42 employees of the Willowbrook facility and their families into jeopardy.

10. ***Sterigenics Has No Adequate Legal Remedy for the Improper Seal Order.*** Sterigenics has no adequate remedy for the unquantifiable reputational damage and damage to business interests wrought by the Seal Order.

11. ***The Balance of Harms Strongly Tips in Favor of Enjoining the Seal Order and Unsealing the Containers.*** While the Willowbrook facility is shut down, Sterigenics faces financial loss, reputational harm, and the loss of benefit of using its own licensed and permitted facility. Employees of the Willowbrook facility risk losing wages and employment. In contrast, Mr. Kim and IEPA can show no genuine harm from the requested relief.

12. ***The Court Should Waive the Bond Requirement under Fed. R. Civ. P. 65(c).*** The decision to require a bond rests within the discretion of the court. *See Scherr v. Volpe*, 466 F. 2d 1027, 1035 (7th Cir. 1972); *Wayne Chem., Inc. v. Columbus Agency Serv. Corp.*, 567 F.2d 692, 701 (7th Cir. 1977) (“Under appropriate circumstances bond may be excused, notwithstanding the literal language of Rule 65(c).”); *Berg v. Teamsters*, No. 10 C 5334, 2010 WL 3701316 at *6 (N.D. Ill. Sept. 9, 2010) (declining to require plaintiffs post a bond because

the record did not indicate that “the defendants will suffer any monetary damages”); *Gill v. Scholz*, No. 16-cv-03221, 2016 WL 4487836 at *8 (C.D. Ill. Aug. 25, 2016) (declining to require a bond in a preliminary injunction sought against the Illinois State Board of Elections). The injunctive relief sought by Sterigenics will not result in any harm to IEPA. Sterigenics should not be required to post a bond simply to exercise its legal rights and to challenge the improper Seal Order. Accordingly, a bond should not be required.

WHEREFORE, Sterigenics respectfully requests that this Court grant its amended motion for preliminary injunction.

Date: March 1, 2019

Respectfully submitted,

By:/s/ Gerard D. Kelly

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2019, I electronically filed the foregoing with the Clerk of Court for the Northern District of Illinois, Eastern Division, using the CM/ECF system. The electronic case filing system sent a “Notice of E-Filing” to the attorneys of record in this case.

Date: March 1, 2019

/s/ *Gerard D. Kelly*

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